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Senate Bill _____
By _____

House No. HB1356
By Odom

AN ACT to amend Tennessee Code Annotated, Title 38, Chapter 8, Part 3, relative to professional standards for due process and rights of certain law enforcement officers during agency investigations.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 38, Chapter 8, Part 3, is amended by deleting such part in its entirety and substituting instead the following:

SECTION 2. As used in this part, unless the context otherwise requires:

(1) "Employing Agency" means any municipality or political subdivision of the State of Tennessee that employs law enforcement officers as defined in this part.

(2) "Law Enforcement Officer" means an officer as defined in Tennessee Code Annotated, Section 39-11-106(21), and who is certified by the Tennessee Peace Officer Standards and Training Commission, except that it shall not include municipal chiefs of police, elected sheriffs of the counties and their administrative officers above rank of lieutenant or probationary new employees of an agency.

SECTION 3. Whenever an investigation by an agency focuses on matters which are likely to lead to dismissal, demotion, suspension or transfer of a law enforcement officer for punitive reasons, the following conditions shall be complied with:

(1) Any questioning of the officer shall take place at a reasonable time and place as designated by the investigating officer, preferably when the officer under investigation is on duty and at the local precinct or police unit of the officer being investigated, unless circumstances dictate otherwise.

(2) Prior to the officer being questioned, the officer shall be informed of:

(A) The name and rank of the investigating officer and of any individual present during the questioning; and

(B) The nature of the investigation.

(3) Questioning sessions shall be for reasonable periods and shall allow time for such personal necessities and rest periods as are reasonably necessary.

(4) The officer being questioned shall not be subjected to offensive language or threatened with transfer, dismissal or disciplinary action. No promise or reward shall be made as an inducement to answering any questions, and a record shall be afforded the officer of all questions and answers.

(5) At the request of any officer under investigation, the officer shall have the right to be represented by counsel at his or her expense or by any other representative of the officer's choice who shall be present at all times during such questioning whenever the questioning relates to the officer's continued fitness for service as a law enforcement officer.

SECTION 4. Before any dismissal, demotion, suspension without pay or transfer for punitive reasons may be imposed, the following must be complied with:

(1) The officer shall be notified in writing of all charges, the basis therefor, and the action which may be taken;

(2) The officer shall be given the opportunity, within a reasonable time limit after the date of the written notice provided for above, to respond orally and in writing to the charges. The time limit shall be determined by the agency, but in no event shall it be less than five (5) calendar days unless agreed to by the officer; and

(3) In making a response, the officer may be assisted by counsel at the officer's own expense.

SECTION 5. (a) Whenever an officer is notified that the officer is going to be dismissed, demoted, suspended or transferred for punitive reasons, the officer may within a reasonable amount of time prior to such disciplinary action, request a hearing before a disciplinary review board. If such request is made in a timely manner, a hearing shall be held within a reasonable amount of time set by the agency; provided, however, the hearing shall be set no earlier than seven (7) calendar days following the date of request or later than fourteen (14) calendar days following the date of the request unless an earlier or later date is acceptable to the officer.

(b) At the hearing, the officer and the agency shall be afforded the opportunity to present evidence and to examine and cross-examine witnesses.

(c) The hearing panel shall have the power to, and on the request of either the officer or the agency shall, issue subpoenas requiring the testimony of witnesses who have refused or failed to appear at the hearing.

(d) The officer shall be given the opportunity to be represented by counsel at the hearing at his or her expense.

(e) The panel conducting the hearing shall be composed of one (1) member selected by the chief administrator of the agency and one (1) member selected by the aggrieved officer. The two (2) members shall then select a neutral third party within forty-eight (48) hours of the chief administrator's selection who shall introduce mediation through the hearing process toward a just and proper disciplinary recommendation based upon the evidence presented. If for any reason the chief administrator and

aggrieved officer are unable to agree on a neutral third party within such forty-eight (48) hour period, the chief executive officer of the county or municipality shall select the neutral third party. Such recommendation shall be made to the agency head, civil service or personnel board responsible for making final disposition.

(f) A record shall be made of the hearing.

SECTION 6. Nothing in this part shall prevent the immediate suspension without pay of any law enforcement officer whose continued presence on the job is deemed to be a substantial and immediate threat to the welfare of his agency or the public, nor shall anything in this part prevent the suspension of an officer for refusing to obey a direct order issued in conformance with the agency's written and disseminated rules and regulations. In such case, the officer shall be afforded the rights provided for under this part, except that an officer's request to be heard by a disciplinary review board shall be made subsequent to the imposition of such suspension.

SECTION 7. Nothing in this part shall be construed to prohibit the informal counseling of an officer by a supervisor in reference to a minor infraction of policy or procedure which does not result in disciplinary action being taken against the officer.

SECTION 8. The rights accorded law enforcement officers in this part shall be minimum rights and all agencies shall promulgate grievance procedures not inconsistent herewith; provided, that any agency may provide for the rights of the law enforcement officers in addition hereto. The provisions of this act shall not apply to any agency or officer covered by a civil service system or program or to any governmental entity or employing agency that has an existing disciplinary procedure for law enforcement officers in effect that complies with due process.

SECTION 9. If any agency employing law enforcement officers fails to comply with the requirements of this part, a law enforcement officer who is aggrieved by such failure to comply may apply directly for relief to the chancery court of the county wherein such employing agency is headquartered.

SECTION 10. No law enforcement officer shall be discharged, disciplined, demoted, denied promotion, transfer or reassignment or otherwise discriminated against with regard to his employment, or be threatened with any such treatment, by reason of the exercise of the rights granted by this act.

SECTION 11. No law enforcement officer shall engage in political activity, support or opposition to any candidate, party or measure in any election when on duty or acting in such officer's official capacity. When off duty and acting as a private citizen, no officer shall be prohibited from engaging in political activity or denied the right to refrain from engaging in such activity.

SECTION 12. No police officer shall be required or requested to disclose any item of his property, income, assets, source of income, debts, or personal or domestic expenditures, including those of any member of his family or household, unless such information is necessary in investigating a possible conflict of interest with respect to the performance of his official duties, unless such disclosure is required by law, or unless such information is related to an investigation. Nothing in this section shall preclude an agency from requiring such police officer to disclose any place of off-duty employment and where they may be contacted.

SECTION 13. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or application, and to that end the provisions of this act are declared to be severable.

SECTION 14. This act shall become effective on January 1, 1996, the public welfare requiring it.

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